

## REMARKS

Claims 1-25 are pending in the application. Claims 1, 7, 12, 19, and 23 are independent. Claims 23-25 are withdrawn from consideration. By the foregoing Amendment, Applicants have amended claims 1, 7, 12, and 19. These changes are believed to introduce no new matter and their entry is respectfully requested.

### Rejection of Claims 1-4 Under 35 U.S.C. §103(a)

In the Office Action, the Examiner rejected claims 1-4 under 35 U.S.C. §103(a) as being anticipated by U.S. Patent No. 5,976,769 to Chapman (hereinafter “Chapman”) in view of U.S. Patent Application No. 2002/0187434 A1 to Blatchford, Jr. et al (hereinafter “Blatchford”). To establish a *prima facie* case of obviousness, an Examiner must show that that there is some suggestion or motivation to modify a reference to arrive at the claimed invention, that there is some expectation of success, and that the cited reference teaches each and every element of the claimed invention. (MPEP §2143.) *citing In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). Applicants respectfully traverse the rejection.

Amended claim 1 recites in pertinent part “fabricating a micro-electrical-mechanical system (MEMS) *frequency-selective device*” (emphasis added). Support for these changes can be found in Applicants’ Specification at paragraph [0004].

Applicants respectfully submit that Chapman in view of Blatchford fails to teach or reasonably suggest fabricating a micro-electrical-mechanical system (MEMS) *frequency-selective device* using the method recited in claim 1. Chapman appears to be directed to “fabrication of *semiconductor devices*” (emphasis added) (see Background). Chapman does not address *MEMS frequency-selective devices*, but is limited to *semiconductor devices*. Blatchford fails to make up for this deficiency. Although Blatchford mentions that lithographic processes are used to fabricate MEMS devices, Blatchford does not specify any particular type of MEMS device, least of all a frequency-selective MEMS device. Thus the combination of Chapman in view of Blatchford fails to teach or fairly suggest each and every element of claim 1. Applicants therefore respectfully submit that claim 1 is patentable over the Chapman in view of Blatchford.

Claims 2-4 properly depend from claim 1, which Applicants respectfully submit is patentable. Accordingly, Applicants respectfully submit that claims 2-4 are patentable for at least the same reasons that claim 1 is patentable. (MPEP §2143.03 (citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)). Accordingly, Applicants respectfully request that the Examiner reconsider and remove the rejection to claims 1-4.

#### Rejection of Claims 1-4 Under 35 U.S.C. §103(a)

In the Office Action, the Examiner rejected claims 1-4 under 35 U.S.C. §103(a) as being anticipated by U.S. Patent No. 6,387,808 to Schlitz et al. (hereinafter “Schlitz”) in view of Blatchford. Applicants respectfully traverse the rejections.

Applicants respectfully submit that Schlitz in view of Blatchford fails to teach or reasonably suggest fabricating a micro-electrical-mechanical system (MEMS) *frequency-selective device* using the method recited in claim 1. Schlitz appears to be directed to “a method of correcting topographical effects on *a microelectronic substrate*” (emphasis added) (see Abstract). Schlitz does not address *micro-electrical-mechanical system (MEMS) devices*, but is limited to *semiconductor devices*. Again, Blatchford fails to make up for this deficiency. Because even though Blatchford mentions that lithographic processes are used to fabricate MEMS devices, Blatchford does not specify any particular type of MEMS device, least of all a frequency-selective MEMS device. Thus the combination of Schlitz in view of Blatchford fails to teach or fairly suggest each and every element of claim 1. Applicants therefore respectfully submit that claim 1 is patentable over the Schlitz in view of Blatchford.

Claims 2-4 properly depend from claim 1, which Applicants respectfully submit is patentable. Accordingly, Applicants respectfully submit that claims 2-4 are patentable for at least the same reasons that claim 1 is patentable. (MPEP §2143.03 (citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)). Accordingly, Applicants respectfully request that the Examiner reconsider and remove the rejection to claims 1-4.

#### Rejection of Claims 5-6 Under 35 U.S.C. §103(a)

In the Office Action, the Examiner rejected claims 5-6 under 35 U.S.C. §103(a) as unpatentable over Schlitz or Chapman in view of U.S. Patent No. 5,502,564 to Ledger. (hereinafter “Ledger”). To establish a *prima facie* case of obviousness, an Examiner must show three things: (1) that there is some suggestion or motivation to modify a reference or combine reference teachings to arrive at the claimed invention, (2) that there must be a reasonable expectation of success, and (3) that the references teach or suggest each and every element of the claimed invention. (MPEP §2143.) Applicants respectfully traverse the rejection.

Claims 5-6 properly depend from claim 1, which applicants respectfully submit is patentable. Accordingly, Applicant respectfully submits that claims 5-6 are patentable as well. (See MPEP §2143.03 (citing *In re Fine*.) Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 5-6.

#### Rejection of Claims 7-10 Under 35 U.S.C. §103(a)

In the Office Action, the Examiner rejected claims 7-10 under 35 U.S.C. §103(a) as unpatentable over Schlitz or Chapman in view of U.S. Patent No. 6,437,903 to Kozhukh et al. (hereinafter “Kozhukh”). Applicants respectfully traverse the rejection.

Amended claim 7 recites in pertinent part “a machine-accessible medium including data that, when accessed by a machine, cause the machine to perform the operations comprising fabricating a micro-electrical-mechanical system (*MEMS*) *frequency-selective device*” (emphasis added). Support for these changes can be found in Applicants’ Specification at paragraph [0004].

Schlitz appears to be directed to “a method of correcting topographical effects on a microelectronic substrate” (emphasis added) (see Abstract). Schlitz does not address micro-electrical-mechanical system (MEMS) devices, least of all MEMS frequency-selective devices. Chapman appears to be directed to “fabrication of semiconductor devices” (emphasis added) (see Background). Chapman does not address MEMS devices, least of all MEMS frequency-selective devices. Kozhukh fails to make of for these deficiencies. Kozhukh appears to be directed to

fabricating a spatial light modulator. Kozhukh does not teach or fairly suggest MEMS devices, least of all MEMS frequency-selective devices. Thus, the combination of Schlitz or Chapman in view of Kozhukh fails to teach or fairly suggest each and every element of claim 7. Applicants therefore respectfully submit that claim 7 is patentable over the Schlitz or Chapman in view of Kozhukh.

Claims 8-10 properly depend from claim 7, which applicants respectfully submit is patentable. Accordingly, Applicant respectfully submits that claims 8-10 are patentable as well. (See MPEP §2143.03 (citing *In re Fine*.) Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 7-10.

Rejection of Claim 11 Under 35 U.S.C. §103(a)

In the Office Action, the Examiner rejected claim 11 under 35 U.S.C. §103(a) as unpatentable over Schlitz or Chapman in view of Kozhukh in further view of Ledger. Applicant respectfully traverses the rejection. Claim 11 properly depends from claim 7, which applicants respectfully submit is patentable. Accordingly, Applicant respectfully submits that claim 11 is patentable as well. (See MPEP §2143.03 (citing *In re Fine*.) Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claim 11.

Rejection of Claim 12-13 and 16-17 Under 35 U.S.C. §103(a)

In the Office Action, the Examiner rejected claims 12-13 and 16-17 under 35 U.S.C. §103(a) as unpatentable over Schlitz or Chapman in view of U.S. Patent No. 5,015,602 to Van Der Plas et al. (hereinafter “Van Der Plas”) in further view of U.S. Patent No. 5,155,053 to Atkinson (hereinafter “Atkinson”). Applicants respectfully traverse the rejection.

Amended claim 12 recites in pertinent part “fabricating a micro-electrical-mechanical system (MEMS) *frequency-selective device*” (emphasis added). Support for these changes can be found in Applicants’ Specification at paragraph [0004].

Applicants respectfully submit that Schlitz or Chapman in view of Van Der Plas in further view of Atkinson fails to teach or reasonably suggest fabricating a micro-electrical-

mechanical system (MEMS) *frequency-selective device* using the method recited in claim 12. Chapman appears to be directed to “fabrication of *semiconductor devices*” (emphasis added) (see Background). Chapman does not address *MEMS frequency-selective devices*, but is limited to *semiconductor devices*. Van Der Plas in further view of Atkinson fails to make up for this deficiency. Schlitz appears to be directed to planarization of a semiconductor device. Like Schlitz, Van Der Plas appears to be directed to planarization of a semiconductor device. Atkinson appears to be directed to fabrication of a hard mask to transfer a small dimension to silicon during the fabrication of a microelectronic device. Thus, the combination of Schlitz or Chapman in view of Van Der Plas in further view of Atkinson fails to teach each and every element of claim 12. Applicants therefore respectfully submit that claim 12 is patentable over Schlitz or Chapman in view of Van Der Plas in further view of Atkinson.

Claims 13 and 16-17 properly depends from claim 12, which applicants respectfully submit is patentable. Accordingly, Applicant respectfully submits that claims 13 and 16-17 are patentable as well. (See MPEP §2143.03 (citing *In re Fine*)) Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claim 12-13 and 16-17.

#### Rejection of Claims 14-15 Under 35 U.S.C. §103(a)

In paragraph 11, the Examiner rejected claims 14-15 under 35 U.S.C. §103(a) as unpatentable over Schlitz or Chapman in view of Van Der Plas in view of Atkinson and in further view of U.S. Patent No. 5,112,602 to Banks et al. (hereinafter “Banks”). Applicant respectfully traverses the rejection. Claims 14-15 properly depend from claim 12, which applicants respectfully submit is patentable. Accordingly, Applicant respectfully submits that claims 14-15 are patentable as well. (See MPEP §2143.03 (citing *In re Fine*)) Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 14-15.

#### Rejection of Claim 18 Under 35 U.S.C. §103(a)

In paragraph 12, the Examiner rejected claim 18 under 35 U.S.C. §103(a) as unpatentable over Schlitz in view of Van Der Plas in view of Atkinson and in further view of Ledger. Applicant respectfully traverses the rejection. Claim 18 properly depends from claim 12, which

applicants respectfully submit is patentable. Accordingly, Applicant respectfully submits that claim 18 is patentable as well. (See MPEP §2143.03 (citing *In re Fine*.) Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claim 18.

Rejection of Claims 19-20 Under 35 U.S.C. §103(a)

In paragraph 13, the Examiner rejected claims 19-20 under 35 U.S.C. §103(a) as unpatentable over Schlitz in view of Van Der Plas in view of Atkinson as applied to claims 12-13 and 16-17 and in further view of Kozhukh. Applicant respectfully traverses the rejection.

Amended claim 19 recites in pertinent part “fabricating a micro-electrical-mechanical system (*MEMS*) *frequency-selective device*” (emphasis added). Support for these changes can be found in Applicants’ Specification at paragraph [0004].

Applicants respectfully submit that Schlitz or Chapman in view of Van Der Plas in further view of Atkinson in further view of Kozhukh fails to teach or reasonably suggest fabricating a micro-electrical-mechanical system (MEMS) *frequency-selective device* using the method recited in claim 19. As discussed above, Chapman appears to be directed to “fabrication of *semiconductor devices*” (emphasis added) (see Background) and does not address *MEMS frequency-selective devices*, but is limited to *semiconductor devices*. Schlitz appears to be directed to planarization of a semiconductor device. Van Der Plas in further view of Atkinson in further view of Kozhukh fails to make up for this deficiency. Like Schlitz, Van Der Plas appears to be directed to planarization of a semiconductor device. Atkinson appears to be directed to fabrication of a hard mask to transfer a small dimension to silicon during the fabrication of a microelectronic device. Kozhukh appears to be directed to fabricating a spatial light modulator. Kozhukh does not teach or fairly suggest MEMS devices, least of all MEMS frequency-selective devices. Thus, the combination of Schlitz or Chapman in view of Van Der Plas in further view of Atkinson in further view of Kozhukh fails to teach each and every element of claim 19. Applicants therefore respectfully submit that claim 19 is patentable over Schlitz or Chapman in view of Van Der Plas in further view of Atkinson in further view of Kozhukh.

Claim 20 properly depends from claim 19, which applicants respectfully submit is patentable. Accordingly, Applicant respectfully submits that claim 20 is patentable as well. (See MPEP §2143.03 (citing *In re Fine*.) Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 19-20.

Rejection of Claims 21-22 Under 35 U.S.C. §103(a)

In paragraph 11, the Examiner rejected claims 21-22 under 35 U.S.C. §103(a) as unpatentable over Schlitz or Chapman in view of Van Der Plas in view of Atkinson in view of Banks in further view of Kozukh. Applicant respectfully traverses the rejection. Claims 21-22 properly depend from claim 19, which applicants respectfully submit is patentable. Accordingly, Applicant respectfully submits that claims 21-22 are patentable as well. (See MPEP §2143.03 (citing *In re Fine*.) Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 21-22.

## CONCLUSION

Applicants submit that all grounds for rejection have been properly traversed, accommodated, or rendered moot, and that the application is in condition for allowance. The Examiner is invited to telephone the undersigned representative if the Examiner believes that an interview might be useful for any reason.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

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Jan Little-Washington  
Jan Little-Washington  
Reg. No. 41,181  
(206) 292-8600

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Name of Person Mailing Correspondence

Y. Tanaka 9-7-06  
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